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HOUSE BILL 1065

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Edward C. Sandoval

AN ACT

RELATING TO ELECTIONS; PROVIDING FOR EARLY PROCESSING OF
ABSENTEE BALLOTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 1-6-5.4 NMSA 1978 (being Laws 1999,
Chapter 267, Section 3) is amended to read:

"1-6-5.4. SECURITY--COUNTING AND CANVASSING--
DEFINITION.--

A. The secretary of state shall adopt rules for
protecting the integrity, security and secrecy of the absentee
ballots, including procedures specifying that machines and
ballot containers remain locked and that ballots not be removed
prior to election day; procedures for voting by absentee
ballot; separation of absentee ballots voted on electronic
voting machines twenty days before the election from those

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1 received through the mail; disposition of absentee ballots
2 rejected by a voting machine; and handling of, registering,
3 counting and canvassing of absentee ballots [~~and sorting of~~
4 ~~absentee ballots by representative district for canvassing~~
5 ~~purposes~~].

6 B. As used in Chapter 1, Article 6 NMSA 1978
7 "Registering of absentee ballots" means inserting the paper
8 absentee ballot into an electronic voting system for recording
9 and retention until votes may be counted and canvassed."

10 Section 2. Section 1-6-10 NMSA 1978 (being Laws 1969,
11 Chapter 240, Section 136, as amended) is amended to read:

12 "1-6-10. RECEIPT OF ABSENTEE BALLOTS BY CLERK.--

13 A. The county clerk shall mark on each completed
14 official mailing envelope the date and time of receipt in the
15 clerk's office, record this information in the absentee ballot
16 register and safely keep the official mailing envelope unopened
17 in a locked and number-sealed ballot box [~~except as provided in~~
18 ~~Subsection H of Section 1-6-14 NMSA 1978~~] until it is delivered
19 [~~on election day~~] to the proper absent voter precinct board or
20 until it is canceled and destroyed in accordance with law.

21 B. The county clerk shall accept completed official
22 mailing envelopes until 7:00 p.m. on election day. Any
23 completed official mailing envelope received after that time
24 shall not be delivered to a precinct board but shall be
25 preserved by the county clerk until the time for election

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1 contests has expired. In the absence of a restraining order
2 after expiration of the time for election contests, the county
3 clerk shall destroy all late official mailing envelopes without
4 opening or permitting the contents to be examined, cast,
5 counted or canvassed. Before their destruction, the county
6 clerk shall count the numbers of late ballots from voters,
7 federal voters, overseas citizen voters and federal qualified
8 electors and report the number from each category to the
9 secretary of state.

10 C. At 5:00 p.m. on the Monday immediately preceding
11 the date of election, the county clerk shall record the numbers
12 of the unused absentee ballots and shall publicly destroy in
13 the county clerk's office all such unused ballots. The county
14 clerk shall execute a certificate of destruction, which shall
15 include the numbers on the absentee ballots destroyed. A copy
16 of the certificate of destruction shall be sent to the
17 secretary of state."

18 Section 3. Section 1-6-11 NMSA 1978 (being Laws 1969,
19 Chapter 240, Section 137, as amended) is amended to read:

20 "1-6-11. DELIVERY OF ABSENTEE BALLOTS TO ABSENT VOTER
21 PRECINCTS.--

22 A. On the Thursday immediately preceding election
23 day, the county clerk shall deliver to the special deputy
24 county clerk for delivery to the absent voter precinct board
25 the absentee ballots received prior to that day. The special

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1 deputy county clerk shall issue a receipt for all ballots
2 delivered for the county clerk and shall observe the listing of
3 the names on the official mailing envelopes in the signature
4 rosters. The special deputy county clerk shall then obtain a
5 receipt executed by the presiding judge and each election judge
6 and shall return the receipt to the county clerk for filing.
7 The receipts shall specify the number of envelopes received by
8 the special deputy county clerk from the county clerk for the
9 absent voter precinct and the number of envelopes received by
10 the absent voter precinct board from the special deputy county
11 clerk.

12 [A.] B. On election day, the county clerk shall
13 deliver ~~[the]~~ all absentee ballots not yet delivered to the
14 absent voter precinct board, but received prior to 7:00 p.m. on
15 election day, to the special deputy county clerks for delivery
16 to the absent voter precinct [boards. ~~The absentee ballots for~~
17 ~~each absent voter precinct shall be separately wrapped, and]~~
18 The special deputy county clerk shall issue a receipt for all
19 ballots delivered for the county clerk [~~Upon delivery of the~~
20 ~~absentee ballots to the absent voter precinct board, the~~
21 ~~special deputy county clerk shall remain in the polling place~~
22 ~~of the absent voter precinct until he has observed the opening~~
23 ~~of the official mailing envelope, the deposit of the ballot in~~
24 ~~the locked ballot box] board and shall observe the listing of~~
25 the names on the official mailing envelope in the signature

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1 rosters. [~~Upon such delivery of absentee ballots~~] The special
2 deputy county clerk shall then obtain a receipt executed by the
3 presiding judge and each election judge and [~~he~~] shall return
4 [~~such~~] the receipt to the county clerk for filing. The
5 receipts shall specify the number of envelopes received by the
6 special deputy county clerk from the county clerk for each
7 absent voter precinct and the number of envelopes received by
8 the absent voter precinct board from the special deputy county
9 clerk.

10 [~~B-~~] C. At 7:00 a.m. on the Thursday prior to
11 election day, the county clerk shall deliver the electronic
12 voting machines used for absentee voting by mail to the absent
13 voter precinct board. The machines shall not be used to vote
14 on or count additional ballots for that election. A special
15 deputy county clerk shall issue a receipt for each voting
16 machine. Upon delivery of a voting machine, the special deputy
17 shall:

18 (1) obtain a receipt executed by the presiding
19 judge and each election judge specifying the serial number and
20 the seal number of the machine [~~and shall~~];

21 (2) verify the public counter number on the
22 machine [~~and he shall~~]; and

23 (3) return the receipt to the county clerk for
24 filing."

25 Section 4. Section 1-6-14 NMSA 1978 (being Laws 1971,

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1 Chapter 317, Section 11, as amended by Laws 2003, Chapter 354,
2 Section 1 and by Laws 2003, Chapter 356, Section 22) is amended
3 to read:

4 "1-6-14. HANDLING ABSENTEE BALLOTS BY ABSENT VOTER
5 PRECINCT BOARDS.--

6 A. Before opening an official mailing envelope, the
7 presiding judge and the election judges shall determine that
8 the required information has been completed on the reverse side
9 of the official mailing envelope.

10 B. If the voter's signature is missing, the
11 presiding judge shall write "Rejected" on the front of the
12 official mailing envelope. The election clerks shall enter the
13 voter's name in the signature rosters and shall write the
14 notation "Rejected--Missing Signature" in the "Notations"
15 column of the signature rosters. The presiding judge shall
16 place the official mailing envelope unopened in an envelope
17 provided for rejected ballots, seal the envelope and write the
18 voter's name on the front of the envelope and deposit it in the
19 locked ballot box.

20 C. A lawfully appointed challenger may examine the
21 official mailing envelope and may challenge the ballot of any
22 absent voter for the following reasons:

23 (1) the official mailing envelope has been
24 opened prior to being received by the absent voter precinct
25 board; or

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1 (2) the person offering to vote is not a
2 federal voter, federal qualified elector, overseas voter or
3 voter as provided in the Election Code.

4 Upon the challenge of an absentee ballot, the election
5 judges and the presiding election judge shall follow the same
6 procedure as when ballots are challenged when a person attempts
7 to vote in person. If a challenge is upheld, the official
8 mailing envelope shall not be opened but shall be placed in an
9 envelope provided for challenged ballots. The same procedure
10 shall be followed in canvassing and determining the validity of
11 challenged absentee ballots as with other challenged ballots.

12 D. If the official mailing envelope has been
13 properly subscribed and the voter has not been challenged:

14 [~~(1)~~] ~~the election judges shall open the~~
15 ~~official mailing envelope and deposit the ballot in its still-~~
16 ~~sealed official inner envelope in the locked ballot box; and~~

17 ~~(2)]~~ (1) the election clerks shall enter the
18 absent voter's name and residence address as shown on the
19 official mailing envelope in the signature rosters and shall
20 mark the notation "AB" opposite the voter's name in the
21 "Notations" column of the signature rosters; and

22 (2) under the personal supervision of the
23 presiding election judge, the election judges shall open the
24 official mailing envelope and the official inner envelope and
25 insert the enclosed ballot into an electronic voting system to

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1 be registered and retained until votes are counted and
2 canvassed following the closing of the polls on election night.

3 E. ~~[Prior to the closing of the polls, the election~~
4 ~~judges and the presiding election judge may either remove the~~
5 ~~absentee ballots from the official inner envelopes and count~~
6 ~~and tally the results of absentee balloting or, under the~~
7 ~~personal supervision of the presiding election judge and one~~
8 ~~election judge from each major political party, count and tally~~
9 ~~the absentee ballots on an electronic voting machine the same~~
10 ~~as if the absent voters had been present and voted in person.]~~

11 It is unlawful for a person to disclose the results of a count
12 and tally or the registration on a voting machine of absentee
13 ballots prior to the closing of the polls.

14 F. Absentee ballots shall be counted and tallied on
15 an electronic voting machine as provided in the Election Code.

16 G. Absent voter precinct polls shall close at the
17 time prescribed by the Election Code for other polling places,
18 and the results of the election shall be certified as
19 prescribed by the secretary of state.

20 ~~[H. The county clerk may convene the absent voter~~
21 ~~precinct board no more than three days before the day of the~~
22 ~~election to alphabetize, enter on the roster and sort the~~
23 ~~absentee ballots by legislative district; provided that a~~
24 ~~member of the absent voter precinct board shall not open an~~
25 ~~official mailing envelope or count and canvass any absentee~~

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